

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

STECKLEIN & RAPP CHARTERED,

Plaintiff,

Docket No. 4:23-mc-09003

v.

EXPERIAN INFORMATION
SOLUTIONS, INC.,

Kansas City, Missouri
April 5, 2023

Defendant.

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TRANSCRIPT OF DISCOVERY HEARING - REDACTED
BEFORE THE HONORABLE ROSEANN KETCHMARK
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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1 (Proceedings commenced at 1:51 PM)

2 THE COURT: Good afternoon. Today is April 5th,
3 2023, approximately 1:50 in the afternoon. And the Court is
4 calling case number 23-9003, Stecklein & Rapp Chartered versus
5 Experian Informations Solutions, Inc. Could I have entry of
6 appearances first by plaintiff.

7 MR. MCCLAIN: Good afternoon, Your Honor. It's Dan
8 McClain on behalf of the plaintiff. Also with me is Cody
9 Weyhofen, my law firm. We also have here today Matt Robertson.
10 He's a lawyer with Stecklein & Rapp Chartered. He's counsel
11 for Mr. and Mrs. Dulworth in the underlying case in Indiana.

12 THE COURT: All right. And if you want him to come
13 sit at counsel table, he can pull up a chair if he needs to
14 serve as your resource for any purpose.

15 All right. And entry for defendant, please.

16 MR. JAMES: Your Honor, Eddie James from the law
17 firm of James Sobba for Experian Information Solutions. And I
18 have with me David Sandefer from the law firm of Jones Day.
19 And Mr. Sandefer will be presenting argument to the Court
20 today.

21 THE COURT: Very good. Welcome.

22 All right. So on the agenda today is the motion to
23 quash. I have been out of town until today, so my clerk gave
24 me a heads up last week. Sorry for coming in late, but I did
25 want to read, in particular, the deposition of Ms. Dulworth to

1 the extent it was supplied to the Court. And I can tell you
2 kind of where my mind is before we get started so that you can
3 make corrections or tailor my thinking more succinctly to your
4 issue.

5 So the point is that the discovery is requested to
6 determine what level of participation or role the Dulworths
7 each had in drafting and reviewing and sending the dispute --
8 the letters to Experian to determine, then, whether the
9 consumer law firm -- the Stecklein & Rapp Chartered is
10 characterized as a credit repair organization because if they
11 are deemed to be a credit repair organization, there may be
12 different obligations of Experian in responding to disputes.

13 Let me first ask Mr. McClain. From a 10,000 feet
14 view, is that, basically, the nature of the setting of the
15 motion to quash?

16 MR. MCCLAIN: Judge, I think you've stated it
17 accurately. But, I mean, there is a legal dispute between the
18 parties about whether the issue of whether Stecklein & Rapp is
19 a credit repair organization, whether that has any relevance to
20 the underlying case. We've cited a lot of cases showing that
21 it's not relevant. The relevant inquiry is what the consumers
22 did, how involved they were in sending their dispute letters.

23 THE COURT: All right. Let me ask Mr. James. Do
24 you want to flesh out that big picture that I just described a
25 little bit differently?

1 MR. JAMES: Well, Your Honor, if I may, Mr. Sandefer
2 is going to --

3 THE COURT: I'm sorry. Mr. Sandefer.

4 MR. JAMES: That's okay.

5 MR. SANDEFER: Your Honor, I would say that, at a
6 high level, that is accurate. That's a great portrayal of the
7 dispute here.

8 THE COURT: All right. And in looking at some of
9 the case law that the parties provided, it seems as though it's
10 important for Experian to determine what involvement -- direct
11 involvement the couple had, the Dulworths. And I know that
12 Mr. Dulworth has some medical issues but may be deposed on the
13 17th. And I see that Ms. Dulworth was deposed and asked
14 specifically about this issue.

15 And in the more generous deposition submitted in
16 document 2-4 by Mr. McClain, in reading that, it seems as
17 though she was very clear on pages 122 through -- well, let me
18 back up, 121 through 125 that this error in reporting of the --
19 I'm forgetting. What was the item that was discharged -- that
20 was not -- that she --

21 MR. MCCLAIN: Your Honor, it was a car loan from
22 Ally Bank.

23 THE COURT: And that she discovered the error and
24 tried to resolve this error on her own, very frustrated, and
25 then sought out assistance. And, according to her, she gave

1 the information to Stecklein. And although she isn't familiar
2 with the forms they used, the format, the computer programs,
3 their mailing service, that she provided the information. She
4 reviewed the information. She electronically signed the
5 documents. But she had to have their assistance because she
6 was not making progress on her own.

7 If that is the testimony and Experian is wanting to
8 see if Stecklein agrees with that or is -- I'm not seeing the
9 relevancy of the incredibly broad, burdensome request that
10 Experian is asking for Stecklein after they have deposed
11 Ms. Dulworth, and she's provided very detailed information.

12 So I want to first turn it over to defense and ask
13 what I'm missing.

14 MR. SANDEFER: Sure, Your Honor. I'm happy to
15 provide my thoughts on that. And there's a couple of points
16 that I would like to make there.

17 THE COURT REPORTER: Mr. Sandefer, can you pull the
18 microphone toward you?

19 MR. SANDEFER: Oh, absolutely.

20 THE COURT: And you can come to the lectern.

21 MR. JAMES: Do you want him to come to the lectern?

22 MR. SANDEFER: Yes.

23 I was also going to show some documents, if that's
24 okay, as well.

25 THE COURT: Of course.

1 All right. Yes, sir.

2 MR. SANDEFER: Can you hear me now?

3 THE COURT: Yes.

4 MR. SANDEFER: Okay. If I need to speak louder,
5 just, please, let me know.

6 As Your Honor mentioned earlier today, one of the
7 plaintiffs in this suit is incapacitated. Although the parties
8 plan to schedule more depositions of Mr. Dulworth, he does
9 suffer from neurosarcoidosis and has seizure and memory issues.
10 It's unclear whether or not Experian will be able to receive
11 any relevant testimony from Mr. Dulworth.

12 Your Honor mentioned Ms. Dulworth's testimony. And
13 there were some -- although she did testify as to her role,
14 there were also a number of elements which she said she had no
15 knowledge of, for example, relating to the role that CaseMail
16 played here.

17 THE COURT: But she said she assumed they mailed it.
18 And so whether they used some program or used a person --
19 delivery or Pony Express or anyone. I mean, I don't know the
20 relevance of that if she said she didn't mail it.

21 MR. SANDEFER: So the language of the statute
22 here -- and it's 1681i, it's a reinvestigation claim under the
23 Fair Credit Reporting Act. It uses the word directly. You can
24 only invoke liability under the statute if a dispute is filed
25 directly from the consumer. Experian's received numerous

1 virtually identical letters. I can show you a few of those in
2 a moment, more than 100. These -- all of the letters that I
3 just referenced, the 100-plus letters, later gave rise to a
4 1681i claim filed by Stecklein & Rapp. And I can show you some
5 of these letters. I believe that I attached one. I have half
6 a dozen from different consumers here.

7 THE COURT: Let's assume that Stecklein -- if I'm
8 saying that right -- sometimes solicits and trolls the
9 databases for errors, and sometimes they assertively collect
10 clients. And whether they do all of the work and the clients
11 are just like, yeah, yeah, yeah, whatever, whatever, that 90
12 percent of them are in that group, but then there are some that
13 they have struggled with trying to get a resolution on their
14 own, and they see a commercial that says, We're a credit repair
15 organization, and we're here to help you. You virtually don't
16 have to do anything. We will take care of it.

17 And they call. And they do participate in giving
18 information and showing all the efforts that they've made and
19 review the documents and sign the documents and -- but that
20 Stecklein uses the exact same forms, and Experian just gets a
21 dump of 100 forms. 90 of them the clients didn't even know
22 letters were sent. And you have the 10 percent that are very
23 directly involved in resolving their issue. Wouldn't you
24 consider those two distinct groups for purposes of your Indiana
25 litigation?

1 MR. SANDEFER: Your Honor, likely so. But what I
2 would also say is it really is a fact specific inquiry. One of
3 the cases cited by Stecklein & Rapp in this case is *Klotz*. I
4 believe it's an Eastern District of Pennsylvania case. And in
5 that case, the plaintiff did play a role. They signed the
6 form. It was later sent out. But they did not -- they were
7 not involved in other ways.

8 So I think you can have these situations where
9 perhaps a client reviews or signs, perhaps a client brings it
10 to the firm's attention. Perhaps they bring one credit
11 reporting issue to Stecklein & Rapp's attention but not
12 another. But all of these are fact specific inquiries. And
13 it's our position that applying the language of the statute,
14 which, again, looks to whether a consumer directly participated
15 in the dispute, that's best reserved for either summary
16 judgment or perhaps even a jury to determine what role is
17 played.

18 THE COURT: So when you say "fact specific
19 inquiries," the relevant pertinent facts would be what
20 involvement clients like Ms. Dulworth played.

21 MR. SANDEFER: The involvement, whether it relates
22 to drafting the letter itself, to sending the letter, to whom
23 the letter was sent, the role that was played, all of that. I
24 agree, Your Honor, that is the fact specific inquiry that I'm
25 referring to.

1 THE COURT: So what in the world does other clients
2 who had no involvement in their letters and in the process --
3 and why in the world would you want those? Why is that -- I
4 don't -- I don't even see it coming close. What is your best
5 answer?

6 MR. SANDEFER: So my best answer to that -- and Your
7 Honor may be somewhat tired of the ghostwriter analogies that
8 were in the briefs. If you have a ghostwriter who every time
9 that they sign a contract -- for example, they say if you give
10 me a title and \$10,000, I will write a book for you. Those
11 sorts of contracts will then assist in determining the role
12 that the ghostwriter plays.

13 When it comes to the other clients -- and I'll also
14 say that to the extent that the Court is concerned about
15 burden, that's something that we repeatedly brought up to
16 Stecklein & Rapp to say, you know, if you do have issues of
17 scope, we are more than happy to eliminate or narrow topics.

18 THE COURT: But you didn't, did you?

19 MR. SANDEFER: Their position was that the subpoenas
20 should be quashed in their entirety. So that was why those
21 discussions never proceeded. It's our position that this
22 information is directly relevant because plaintiffs will need
23 to show that they directly disputed with Experian.

24 And one other note that I also just wanted to make
25 with these letters -- and, again, I have letters from half a

1 dozen consumers -- but this address here, 701 Experian Parkway,
2 it's an unlisted address. It's more or less an office
3 building. If you type it into Google, what comes up is a
4 Google review and a MapQuest. If you go to
5 Experian.com/dispute, it gives you a different address.

6 Every letter that we've received in a case filed by
7 Stecklein & Rapp -- and I understand your concern here, which
8 is, you know, we're -- there may be a difference between the 90
9 percent of consumers that are uninvolved and the 10 percent
10 that are, but every one of these letters were sent to this
11 unlisted address. That, to us, demonstrates -- going back to
12 the ghostwriter example -- that there are substantial
13 similarities across these letters and that that is evidence
14 that Stecklein & Rapp has directly inserted themselves into the
15 dispute process and is stepping out of.

16 And one other thing I also wanted to reference here.
17 This entire dispute mechanism, it's pre-litigation. This
18 relates to their claims of privilege. But these are dispute
19 letters that if Experian does not respond to or does not
20 respond sufficiently to, liability is invoked under the FCRA
21 provision. But all of these letters that I'm referencing,
22 again, were sent to this unlisted address that I'm not even
23 sure if a consumer could find.

24 The idea that all of these letters have nearly
25 identical language and are sent to this unlisted address

1 demonstrates, from our perspective, that the consumers here are
2 relying heavily or completely across -- across cases on
3 Stecklein & Rapp.

4 THE COURT: Okay. Well, that's interesting. You
5 said that every letter that you've received from Stecklein has
6 that address. How delayed are those letters for you to receive
7 them?

8 MR. SANDEFER: Could Your Honor clarify what you
9 mean by "delayed"?

10 THE COURT: Or have you not noticed any delay in
11 receiving the letters that are sent to this 701 Experian
12 Parkway?

13 MR. SANDEFER: I'm -- I'm sorry, Your Honor. Could
14 you rephrase? I'm not understanding what you mean by the word
15 "delay."

16 THE COURT: Well, I guess, one thought was if part
17 of Stecklein's strategy in dummyping up cases and getting
18 damages is they do this really unhelpful address of 701
19 Experian that delays the process, and that's just part of their
20 strategy. And that if you show a lot of letters that, yes,
21 this is routine strategy that they have. It delays the
22 letters. And it increases their damage or whatever. That's
23 why I was asking. Were these letters delayed in any way for a
24 strategic purpose of sending them to 701 Experian Parkway
25 that's not the best address to utilize?

1 MR. SANDEFER: I -- I can't speak as to the strategy
2 that Stecklein & Rapp has. There may be a manual for
3 processing these sorts of letters or sending them out. I'm not
4 sure.

5 THE COURT: So that isn't on your radar that they
6 may have some strategic reason for utilizing this address
7 instead of a more efficient direct address?

8 MR. SANDEFER: Not for the reason of delay.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 these to you. But just to clarify -- or just to show you,
13 there's a 701 Parkway, 701 Parkway, text is virtually identical
14 across each. These letters are transmitted, from my
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 As we mentioned, I believe it was in a footnote, one
20 of the biggest issues that credit reporting agencies face is
21 third party disputes that are not drafted by consumers.
22 Millions of these letters are sent. And it is financially
23 impossible to, for example, deal with a credit repair
24 organization that sends out hundreds of thousands of letters
25 oftentimes disputing issues that have no merit.

1 THE COURT: So your point is that if Stecklein is a
2 credit repair organization to the extent that they don't
3 involve most of their clients directly with their process that
4 they should be viewed in that manner for all of their cases
5 because it's impossible, once someone's recognized as a credit
6 repair organization that doesn't have direct processing with
7 their clients that it's too burdensome on Experian to have to
8 treat every one of these as potentially a direct participation?

9 MR. SANDEFER: I -- I'm hesitant to speak to other
10 cases. And I know that that's a fine line that I'm walking
11 where I'm saying that I don't want to say that this should
12 occur in every case, but, at the same time, I'm referring to
13 these general policies.

14 THE COURT: I'm just reaching for some relevancy of
15 why you need anything besides what Ms. Dulworth and Stecklein
16 did together in you receiving a letter from -- you, your
17 client, receiving a letter from Stecklein on behalf of
18 Ms. Dulworth. I'm just not -- I'm just trying to --

19 MR. SANDEFER: Right.

20 THE COURT: -- brainstorm some relevancy.

21 MR. SANDEFER: So -- and I would almost put these
22 into two buckets. So there are the -- to the extent that they
23 exist -- policies, testimony, things of that sort related to
24 the disputes here. So the four disputes that were sent and
25 then invoked this liability under 1681i. That -- with regard

1 to the deposition and document subpoenas addressed specifically
2 to those letters, I think there's a much more -- a much clearer
3 path to relevancy. And I can have that discussion with you, if
4 you would like.

5 There is also the second bucket, which, again, is
6 where I'm referring to general retention agreements or general
7 manual or things of that sort. That, again, where we have
8 numerous letters that are nearly identical, we believe that
9 there are these repeat processes. These repeat processes speak
10 to the role that Stecklein & Rapp plays in every case. If
11 there's a divergence where -- for example, Your Honor mentioned
12 there may be -- this case may differ from others, that would
13 probably fall in the first bucket. But that second bucket we
14 still believe is relevant, which, again, that is what Stecklein
15 & Rapp, how they send credit disputes on behalf of their
16 clients. They advertise that they assist in that process.

17 In the briefing here, they admitted to assisting in
18 it. So it's really just a question not whether or not they
19 assist, it's to what degree. And, again, where all these
20 letters are being sent to this unlisted address, it appears
21 that they were playing a substantial role. As to whether or
22 not that role is enough to have the -- to absolve Experian of
23 liability under 1681, the Dulworth case, again, it's our
24 position that is more than likely going to be resolved at
25 summary judgment or perhaps trial. But this evidence will

1 still -- both buckets are relevant in making that
2 determination.

3 THE COURT: All right. I'm just not seeing it like
4 you do. It seems like you have a lot of sample similar letters
5 with similar procedures and mailing and similar addresses that
6 I guess you can make this point that --

7 MR. MCCLAIN: Your Honor --

8 THE COURT: -- they help a lot of clients with --
9 I'm just not seeing it.

10 MR. SANDEFER: And --

11 THE COURT: Okay. Let me -- I'll give you a chance
12 to --

13 MR. MCCLAIN: Sure.

14 THE COURT: So you have a lot of similar documents,
15 same format, same terminology, phrasing, same mailing process,
16 same address that's a little unique of the 701 Experian
17 Parkway. You already have that. What would you gain by
18 getting the information -- it is such a broad subpoena request.

19 Number 1, all documents referring or relating to
20 your drafting of consumer disputes, including, but not limited
21 to, form or template dispute letters. All documents referring
22 or relating to your drafting of consumer disputes, including,
23 but not limited to, form or template dispute letters.

24 MR. MCCLAIN: Your Honor, and referring or relating,
25 there's a definition to that, too.

1 THE COURT: Okay. And tell me in your clearest way,
2 with different words than you've used so far, the relevancy of
3 those documents and forms and templates that are outside of
4 what was utilized with Dulworth. Tell me what the relevancy of
5 those are.

6 MR. SANDEFER: And you're referring to the first and
7 second?

8 THE COURT: I was just -- number 1, all documents
9 referring and relating to your drafting of -- because that's
10 not limited to Dulworth. That's limited to -- it sounds like
11 all.

12 MR. SANDEFER: Right. And, Your Honor, this is what
13 I was saying earlier about the two buckets. And if Your Honor,
14 you know, did decide that pursuing that second bucket of claims
15 relating to these sort of procedures across cases and across
16 dispute letters for breadth or other reasons, that's something
17 that, of course, we would understand.

18 What I will say, though -- and I'm happy to, you
19 know, kind of rephrase or reclarify what I've said before.
20 Again, it's our position that here we have a lot of smoke. We
21 have a lot of smoke with regard to the formatting of these
22 letters, to where they were addressed to, to even the way that
23 they were sent. But here we don't have information as far as
24 the role that Stecklein & Rapp plays. And, really, we are
25 looking at this case specifically.

1 But what -- for example, say that there was a manual
2 or that it was included in the retention agreement, that sort
3 of information would then permit us to have a better idea of
4 what occurred in this case. I'm not sure if that clarification
5 assists at all.

6 THE COURT: This isn't limited to a manual or
7 retention agreement. It just says, All documents referring or
8 relating to your drafting of consumer disputes, including, but
9 not limited to, form or template dispute letters. And they
10 said it's too burdensome, and you don't think it is. You
11 haven't given them any relief. And we're all here in court.
12 And I'm just asking for you to tell me the relevance of number
13 1 as to those documents and forms and templates that weren't
14 utilized in the Dulworth --

15 MR. SANDEFER: And, again, Your Honor, I would say
16 that, you know -- and you say that they were not used. We
17 don't know to the extent that form or template dispute letters
18 were or were not used. None of these have been produced.
19 Stecklein & Rapp has agreed --

20 THE COURT: But it's not limited to just Dulworth.
21 You're wanting to know all disputes.

22 MR. SANDEFER: And --

23 THE COURT: So why do you need to -- why are you
24 telling Stecklein that they need to turn over, I guess, the
25 whole case file, everything referring, relating to? I'm just

1 not seeing that. And you're here in court needing to defend
2 because you've not given them any relief through your
3 discussions of this is too burdensome.

4 Let's be more reasonable. And if they're not
5 willing to compromise, you're not willing to, even on your own,
6 say, well, this might be a little burdensome; it might be a
7 little broad.

8 MR. SANDEFER: And, Your Honor, my apologies if I
9 misspoke. Our position from the beginning of this -- and we've
10 reached out to them several times -- is we were happy to
11 eliminate or narrow the scope of certain topics. If this was a
12 discussion that we -- that we could have had, we would have had
13 it. That's why I believe on three separate occasions we
14 reached out. Their position each time was, though, that none
15 of this information was relevant. It was all overly
16 burdensome. It was all privileged.

17 THE COURT: So what is the relevance of number 1 as
18 to John Doe, a client John Doe and how his dispute was handled?

19 MR. SANDEFER: So my best argument, again, would be
20 that kind of having a -- knowing, for example, that there is a
21 form or template letter that is used in all cases, that would
22 assist with figuring out what happened here. Though I'll also
23 say -- and this is where I was going earlier, if Your Honor
24 or -- or opposing counsel would want us to limit the breadth or
25 the scope, we are happy to eliminate number 1.

1 THE COURT: That's not a good, strong position to be
2 in when you come in court that we haven't given an inch, even
3 though this -- I can't explain very well why this is relevant,
4 but I'm not -- if you want us to do something more reasonable,
5 if you order us to do something more reasonable, we will.
6 That's just not a strong, persuasive position to come into
7 court.

8 I'll let you respond again. Let me hear from
9 Mr. McClain.

10 MR. MCCLAIN: Judge, I think you've hit it on the
11 head. Well, first of all, let's talk about the address, which
12 I think is sort of a red herring, but -- so we know Experian --

13 THE COURT: And come on up to the lectern so that
14 the court reporter can hear you. And what I'd like to know
15 is -- I'm inclined to follow your thinking as to information
16 outside of the Dulworth. But I am curious if they -- I'll play
17 the devil's advocate. If they took the deposition of
18 Ms. Dulworth, and they're, like, someone coached her into
19 saying this. I want to challenge it. Let me see what the
20 other folks in the room -- what their memory is. How do they
21 go about challenging the process? Is it -- what's reasonable
22 for them to -- have they deposed the -- I don't know enough
23 about this case.

24 MR. MCCLAIN: Yeah. So they've deposed
25 Mrs. Dulworth. And you've read her testimony. And

1 Mr. Dulworth -- they started the deposition.

2 THE COURT: Yes.

3 MR. MCCLAIN: He had a seizure. He's going to be
4 deposed again in sort of a series of limited depositions.

5 THE COURT: Did they do, like, interrogatories on
6 how was -- Stecklein, you tell us what your process -- how did
7 she work directly in this process? Did they get that
8 information?

9 MR. MCCLAIN: So, Judge, I asked that question of my
10 client. I was like, hey, did you guys ask any interrogatories
11 on this? And I didn't get a response, which I'm going to take
12 that as a no, but maybe -- talk to Matt real quick.

13 THE COURT: Okay. So, you know, I'm just thinking
14 that, you know, if Stecklein was -- if Stecklein were asked,
15 Can you confirm what Ms. Brianna Dulworth is saying, did they
16 do that? Or was that requested? Or was it just simply give us
17 your whole law firm files and let us --

18 MR. MCCLAIN: It was the subpoenas on the same day
19 as the settlement offer. Right.

20 THE COURT: I know you're called in here just for
21 this situation.

22 MR. MCCLAIN: Yes, ma'am.

23 THE COURT: What is a reasonable discovery response
24 from Stecklein to be so that they can clear up their confusion
25 or their disbelief of what Ms. Dulworth or if they're wanting

1 to confirm what Ms. Dulworth testified to?

2 MR. MCCLAIN: Judge, I just -- I don't think -- I
3 don't think they can get into the lawyers to try to get the
4 lawyers to impeach their client's testimony. I mean, I think
5 that's part of the problem of the subpoena is it raises -- this
6 raises multiple levels of conflicts for Stecklein & Rapp,
7 including, potentially, testifying against their client, being
8 disqualified as trial counsel. I mean, that's --

9 THE COURT: But if they -- Stecklein's privy to all
10 the information. And if they're saying, Hey, she testified to
11 this, but we want to confirm that. Give us all your files in
12 your law office, and let us look through everything. Seems
13 like Stecklein would say, Well, that's crazy. That's over
14 broad and burdensome and expensive. If you want us to confirm,
15 I will tell you -- I will do a declaration, this is consistent
16 with -- her testimony is consistent with what occurred. I'm
17 just trying to think outside the box.

18 MR. MCCLAIN: Right. What could we --

19 THE COURT: Why you all can't do something short of
20 coming into court and having a hearing over this.

21 MR. MCCLAIN: You know, I think you could do
22 something short of subpoenaing trial counsel, too. I mean, I
23 understand people want to test one witness's, you know,
24 recollection or testimony. But, you know what, that's a
25 witness. Sometimes you only -- you know, you're stuck with

1 what your witness says. And she did testify exactly on the
2 points that you mentioned. And those are the ones that are
3 directly relevant. Under the cases -- the only relevant
4 inquiry is, as he said, it's fact specific. It's case by case.
5 You've got to talk to the consumer to find out what they did.
6 That's your source of information, not their lawyer.

7 THE COURT: Okay. So then let's set aside for now
8 all the requests for anything outside of the Dulworth file and
9 process and talk about other areas that are too burdensome or
10 confidential. It seems as though -- the first one that I see
11 is 12, all retention agreements or contracts between you and
12 plaintiffs. I've got a little abbreviated form here that my
13 clerk prepared for me.

14 Sara, are these numbered on the memo that you
15 prepared? Are these -- do these correspond with the request?

16 THE LAW CLERK: Yes.

17 THE COURT: So Number 12, the request for all
18 retention agreements or contracts between you and plaintiffs.
19 Do you object to that? Or does your client object to that?

20 MR. MCCLAIN: The retention agreement between the
21 Dulworths and Stecklein & Rapp?

22 THE COURT: All retention agreements or contracts
23 between you and plaintiffs. That may be abbreviated. Let me
24 look at the --

25 MR. MCCLAIN: Yeah. There was one that asked about

1 basically for the -- I think it's another referring or relating
2 to, but I think --

3 THE COURT: Do you have the 12 -- yeah.

4 MR. MCCLAIN: I do. Hang on.

5 THE COURT: Let's look at 12.

6 MR. MCCLAIN: Yep.

7 THE COURT: So number 12. Yeah. She wrote it just
8 like it is.

9 All retention agreements and contracts between you
10 and plaintiffs. Do you have any -- does your client have any
11 objection to turning over retention agreements or contracts?
12 Is that privileged information?

13 MR. MCCLAIN: Between the client and -- between the
14 Dulworths and Stecklein & Rapp? The retention agreement?

15 THE COURT: What does -- what is 12 referring to?

16 MR. MCCLAIN: Yeah. It is. It must be -- it's --
17 yeah. All retention agreements or contracts between you and
18 the plaintiffs. So that's between you and the Dulworths.

19 THE COURT: Between your client and the Dulworths?

20 MR. MCCLAIN: Yes.

21 THE COURT: Yes. The plaintiffs. Okay. And does
22 your client object to 12?

23 MR. MCCLAIN: We do.

24 THE COURT: On what grounds?

25 MR. MCCLAIN: All right. So we don't think it's

1 relevant. And we also think -- it's just -- it's not going to
2 move the -- the contract -- the retention agreement or
3 engagement letter between Stecklein & Rapp and the clients
4 isn't going to move the evidentiary needle about what the
5 client actually did in terms of --

6 THE COURT: Probably not. But I wonder if that's
7 something that I could just review quickly in camera.

8 MR. MCCLAIN: I may have it.

9 THE COURT: Okay.

10 MR. MCCLAIN: I may have it.

11 THE COURT: And we don't have to do it now. I'm
12 just trying to --

13 MR. MCCLAIN: But, Judge, the other thing I'd say is
14 this. So when I talked to the client about the engagement
15 letters, you know, those are confidential. I mean, under the
16 professional -- rules of professional conduct, they're
17 confidential.

18 The other thing is, Stecklein & Rapp is concerned
19 that they -- so sometimes in engagement letters, they -- they,
20 basically, kind of explain to the clients, like, this is how
21 your case should be valued. Right? This is how we're going to
22 value your case. We don't want Experian to see how we're
23 valuing our cases.

24 THE COURT: Right.

25 MR. MCCLAIN: And we do that -- you know, that's a

1 service to the client so they have reasonable expectations.
2 But it could be used against the Dulworths. It could be used
3 against every other client.

4 THE COURT: So do you think -- can you think of the
5 benefits or pitfalls of -- if those aren't very voluminous, to
6 having the Court review those and having Experian be specific
7 on what it is that is in that letter that is useful and fair
8 for them to have?

9 MR. MCCLAIN: Again, Judge, I would say this. Now
10 we're going to use the engagement letter to try to impeach the
11 client's testimony. It's putting the lawyer into a conflict.
12 I mean, what you're talking about, that puts the lawyer into a
13 conflict situation.

14 THE COURT: Well, I don't know. I don't -- I
15 haven't seen the letter so --

16 MR. MCCLAIN: Yeah. No, no, no. I'm just saying it
17 could be useful -- you're saying it could be useful to them
18 having litigated with them.

19 THE COURT: Which, you know, that may be -- you
20 are -- your client is in the best position to brainstorm how
21 that could be improperly used or -- but I haven't seen it.

22 MR. MCCLAIN: That's the thing.

23 THE COURT: They don't --

24 MR. MCCLAIN: May I ask, does the Court -- do you
25 have other cases where you're -- I mean, I know when there's a

1 fee dispute or something like that, engagement letters might be
2 produced as evidence. But in just sort of run-of-the-mill
3 civil litigation or consumer litigation, I mean, I don't think
4 I've ever in my life produced an engagement letter. We do
5 consider them confidential. And they belong to the client, you
6 know, too.

7 THE COURT: I reviewed a lot of stuff in camera.
8 That's just kind of my -- one of my default when I just don't
9 know enough about what's in the letter. I'm not clear what
10 they're hoping --

11 MR. MCCLAIN: Right.

12 THE COURT: -- to find in the letter that could be
13 helpful.

14 MR. MCCLAIN: And you've really hit it on the head.
15 I mean, the cases we cited -- because these are facially over
16 broad requests, which I mentioned on the -- on our, you know,
17 meet and confer call. Referring or relating to, what does that
18 mean. It's now their burden to demonstrate to you this is why
19 it's relevant. This is why it's not burdensome. It's not my
20 burden anymore; it's theirs.

21 THE COURT: Well, you know, I thought your
22 submission of the deposition where she testifies as to her
23 efforts before she even got to Stecklein is very different than
24 someone knocking on her door and saying, Hey.

25 MR. MCCLAIN: Yeah. No. You're right. That's the

1 thing. We've never disputed, yeah, we assisted with the
2 letter, the dispute letters. That's why they hired us because
3 she tried to do it on her own and she couldn't and failed. So
4 she went to lawyers.

5 THE COURT: Right. Right. So I'm assuming the
6 engagement letter, retention, is irrelevant based on the
7 evidence that you've submitted to the Court and that that will
8 just be a very quick way for me to -- if it's, like, less than
9 10 pages, let the Court review it. You know our position.
10 It's confidential. It's irrelevant. And done. But I'm open
11 to -- there's a lot of ways to skin a cat. And I'm open to
12 suggestions and how we move this discovery dispute forward and
13 be done with it.

14 MR. MCCLAIN: So, Your Honor, one reason I'm, you
15 know, reluctant to provide anything -- you know, you saw in our
16 brief that, you know, Stecklein & Rapp has filed 71, you know,
17 FCRA cases, you know, since 2019. Experian has been sued 8,700
18 times. Jones Day is involved in a lot of those cases. They're
19 a repeat player. If you -- if you crack this door a little
20 bit --

21 THE COURT: Okay.

22 MR. MCCLAIN: -- it's going to be problematic not
23 just in this case, but you're to -- your ruling is going to
24 wind up getting trotted all over and everybody is going to --
25 you know, all these consumer lawyers are going to have to start

1 producing their engagement letters.

2 THE COURT: That's valid. That's a good point.

3 MR. MCCLAIN: Yeah. And when that happens, then
4 every other court with a case like the Dulworth case, they're
5 going to have all these discovery disputes about engagement
6 letters again.

7 THE COURT: You're a good attorney. Thank you.

8 MR. MCCLAIN: It's a high compliment, Your Honor.

9 THE COURT: So, then, unless they can articulate
10 what the relevant information in those retention agreement and
11 contract is, I'm influenced by your comments.

12 All right. Is there anything in this request that
13 you think is a fair and appropriate request?

14 MR. MCCLAIN: Judge, I'm a meet and confer person.
15 And I try to do that. On this one, it's just facially over
16 broad. I got an email saying, Oh, we're open to eliminating
17 topics or narrowing them, and they never did. It's not up to
18 me to narrow it for them. We think the whole thing is
19 inappropriate. And I think you'd be setting a bad precedent if
20 any piece of this subpoena -- these subpoenas are allowed.

21 THE COURT: What is Steinkamp and Associates, PC, in
22 request 13?

23 MR. MCCLAIN: That's a -- so, you know, Stecklein &
24 Rapp is a Kansas City law firm. And the -- the Dulworths live
25 in Indiana. So Mr. Steinkamp is local counsel for Stecklein &

1 Rapp in Indiana.

2 THE COURT: Who did they go to first? Steinkamp or
3 Stecklein?

4 MR. MCCLAIN: That's a good question. I actually
5 don't know. I know that they were looking for consumer
6 expertise, Mrs. Dulworth was, and she found Stecklein & Rapp.

7 THE COURT: Okay. But you don't know if --

8 MR. MCCLAIN: I don't know --

9 THE COURT: -- Steinkamp referred to --

10 This is off the record. They can confer.

11 MR. MCCLAIN: He thinks -- he thinks the Dulworths
12 found Mr. Steinkamp first. And then Mr. Steinkamp contacted
13 Stecklein & Rapp because of their expertise.

14 THE COURT: Yeah, okay.

15 And then the deposition subpoena seeks testimony --

16 One thing I didn't really understand -- and you
17 probably wouldn't understand either with the limited purpose of
18 your representation -- in the Brianna Dulworth deposition, when
19 they asked her on page 111 -- do you see the last sentence
20 where it says, quote, I have cut and pasted the wrong part from
21 the report here. I have no idea what that means.

22 The witness says, How did I know that this was not
23 correct reporting?

24 And the question, Do you know if you or your
25 attorney cut and pasted this part of the credit report?

1 I don't remember that either.

2 MR. MCCLAIN: Your Honor, I -- I didn't follow that
3 very well either. Maybe the deposition questions could have
4 been a little more pointed or -- I didn't follow it.

5 THE COURT: I mean, that could be really relevant if
6 she's correcting information.

7 I thought I read somewhere that she was clear that
8 she made her efforts before she contacted --

9 MR. MCCLAIN: She --

10 THE COURT: Does that sound familiar?

11 MR. MCCLAIN: I read that. I read those excerpts
12 this morning, the exact ones you're reading. And that's
13 exactly what --

14 THE COURT: Why am I not finding it? Do you have a
15 copy of that?

16 MR. MCCLAIN: I can look real quick.

17 We don't have the entire deposition, of course,
18 Judge. But on 121 -- yeah, okay. So on page 120 --

19 THE COURT: Yes.

20 MR. MCCLAIN: -- at the bottom, at the bottom, it
21 says: Question: You're alleging in this suit that Ally
22 Financial neglected to inform the credit bureaus of the
23 reaffirmation, right?

24 And she says -- and then the witness, you know,
25 says, Yes, you know, and our payments at the time wasn't even

1 reported that we paid the payments.

2 And then they asked about, How did you learn that?

3 She talks about, I contacted Ally and asked them to
4 update my reporting.

5 All of this occurred before, you know -- well,
6 before the dispute letters were sent.

7 THE COURT: Where does it say "before the dispute
8 letters were sent"?

9 MR. MCCLAIN: Oh -- yeah. So I -- I can -- I can
10 tell you that -- that that's what happened. Ms. Dulworth tried
11 on her own, as she testified, and that those efforts were
12 before she retained Stecklein & Rapp. We could probably get
13 additional -- we could probably go through the whole depo and
14 find that for you.

15 What we might wind up doing is sort of having to
16 compare the date of the letters that she's talking about in her
17 deposition that were exhibits with when we know that she
18 retained Stecklein & Rapp. But that's why she was looking for
19 counsel. She'd tried and failed.

20 THE COURT: Okay. It's on page 123 when they --
21 there were requests for credit reports. And her answer was, I
22 believe both the lawyers and she -- she says, I believe both
23 requested credit reports. I requested all of them initially.
24 And then if they did, I had to sign paperwork to allow them to.

25 MR. MCCLAIN: Yes.

1 THE COURT: So she had made efforts initially.
2 Okay. So because of her efforts done initially before she
3 engaged in Steinkamp and Stecklein, I'm not seeing the
4 relevance to the deposition subpoena regarding their
5 advertisement and their soliciting customers.

6 MR. MCCLAIN: And, Your Honor, those requests, which
7 are, you know -- those requests and deposition topics, those
8 are directed at the question of trying to explore whether
9 Stecklein & Rapp is a credit repair organization. And under
10 the cases we cited, that's not relevant. What is relevant is
11 what role the consumer played in the dispute letters.

12 THE COURT: What about their position that when you
13 have some law firms that at times are clearly just soliciting
14 and are credit repair organizations but other times they're
15 not? How do they -- it's burdensome for them to have that kind
16 of hybrid receipt of information that they can't distinguish
17 between is this a credit repair organizational letter in this
18 context, or is it a direct cooperative with the client letter
19 that appears exactly the same?

20 MR. MCCLAIN: So I don't know -- I don't see how it
21 can be burdensome because they're supposed to open up people's
22 letters, right? I mean, if you send in a letter to Experian to
23 dispute credit, they're supposed to open up the letters.
24 And --

25 THE COURT: So it's just the nature of the beast, if

1 there's a --

2 MR. MCCLAIN: I think it's their obligation.

3 THE COURT: [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 THE COURT: All right. I don't know enough about
21 it.

22 MR. MCCLAIN: No. And, you know, the other thing is
23 if all the letters are the same and they're all on sort of the
24 same CaseMail and they're using the same service and they're
25 the same, at some point, don't you figure out we better open

1 these up? These keep getting sued.

2 THE COURT: I don't know if 90 percent of them the
3 clients don't have anything to do with them, and they're just
4 different than the 10 percent. I don't know. Their point is
5 if the majority of them are --

6 MR. MCCLAIN: Judge, I do want to say one last thing
7 because it's important to the client. So they are -- you know,
8 there are -- we all know, there's lawyers out there and they
9 send dispute letters en masse. And they're high volume filers,
10 and that's how they make their money on filing high volume
11 cases.

12 That's not Stecklein & Rapp. They try to be more
13 selective. They're looking for meritorious cases, like the
14 Dulworths. And they took a lot of umbrage in the statement in
15 Experian's brief that we were sending hundreds, if not
16 thousands of dispute letters en masse because we're a dispute
17 mill. Very offended by that and wanted me to let the Court
18 know, since they practice here, that it's not true.

19 THE COURT: Yeah. And I get that kind of
20 strengthens their point that if they could show more cases than
21 just this one. Usually, it's not this direct.

22 MR. MCCLAIN: Yeah.

23 THE COURT: I'm just trying to imagine what their
24 best position would be to needing that information.

25 MR. MCCLAIN: I think they would like it to be true,

1 but that's not true.

2 MR. JAMES: Can I say something, Your Honor?

3 THE COURT: Yes. You can respond.

4 MR. MCCLAIN: Getting double teamed.

5 MR. JAMES: You're getting double teamed. It's a
6 tag team.

7 Your Honor, Eddie James from the law firm of James
8 Sobba. And I'm local counsel for Experian on this matter.

9 I think the heart of this Court's questioning
10 indicates that it -- you know, that what we are driving at is
11 an essential element of the claim they are presenting in
12 Indiana. Right? In the District of Indiana, they have to
13 prove under this statute that they were personally involved,
14 personally committed, personally invested, and participated in
15 drafting these letters. That's an essential element of their
16 claim. And that's the only discovery it seems like this Court
17 is going to allow is the stuff that goes to an essential
18 element of their claim.

19 So if we look at that in the specific request for
20 production of documents, that would be request Number 2, all
21 documents referring or relating to your drafting of plaintiff
22 dispute letters because we need to show -- we don't know what
23 the -- what the role was of these two plaintiffs in drafting
24 their letters. And we want -- we know they came from this law
25 firm. They went through the Mailchimp platform of this law

1 firm. So we want to know --

2 THE COURT: Well, you already know that she has no
3 clue what forms, what applications, what format that they use.
4 She did not put pen to the paper. She did not generate any of
5 the wording. She wasn't sure how to word it. That's why she
6 called them. She has no -- she knows the folks that -- the
7 woman's name. She's familiar with that. They've discussed the
8 case. She provided information. She knows nothing about the
9 mailing. She electronically signed.

10 MR. JAMES: Right. But Experian -- I didn't mean to
11 interrupt you, Your Honor. But Experian has to convince the
12 court in Indiana that the plaintiffs have failed on that
13 essential element of their claim. And so we have her memory,
14 foggy and incomplete, as to what they did and how they did it.
15 And the most direct testimony and documents would be what they
16 actually did, the people who actually sent the letter, put it
17 in the Mailchimp system and sent it out.

18 That's the discovery that Experian is looking for
19 because the court in Indiana -- I mean, the court in Indiana
20 right now has an incomplete picture. I mean, she is gappy on
21 her testimony about how it was done. So I think if -- if the
22 Court is inclined -- I think it's clearly relevant, it's not
23 burdensome, and it's not privileged to have them respond to the
24 request for production Number 2 and to the request for
25 production Number 12 involving retention agreements.

1 And the reason retention agreements would be
2 important is if the retention agreement says we intend to draft
3 your dispute letter, we intend to prepare your dispute letter,
4 we intend to send your dispute letter, and all this will be
5 covered by our engagement, that would help our case in Indiana.
6 So the -- the engagement letter is directly relevant.

7 And if they have the same -- I mean, the reason we
8 were asking for broader discovery is if they have the same
9 pattern and practice with other consumers, other engagement
10 letters, other letters they're writing, that would be good to
11 show the court in Indiana because it would show that these guys
12 are doing this over and over, and, clearly, these people aren't
13 sending this letter on their own.

14 So that's all I wanted to say, Your Honor. We could
15 limit the deposition -- and advertising, if the advertisements
16 and the deposition topics, if the advertisements say we will
17 draft your dispute letters, we will send your dispute letters,
18 all you have to do is sign them, that is -- I mean, all you
19 have to do is DocuSign them. They're not even signing these
20 letters. They're DocuSigning these letters. So that would be
21 germane and relevant evidence to a critical portion of their
22 claim.

23 And so that's why we think the discovery -- the
24 motion to quash should be denied on the deposition topics
25 relating to their work for the Dulworths, the advertising, and

1 to her engagement with the Dulworths. And the request for
2 production, subpoena, should be allowed as to topics 2 and 12.

3 THE COURT: I don't -- I'm still not seeing it. If
4 their retention agreement says we will help draft your letter,
5 we know, you know, how to articulate it, we'll even mail it for
6 you, so what? She said, Yeah, that's what they did. I gave
7 them the information. They utilized the words. I reviewed,
8 and it was correct. And I signed it. And they mailed it.
9 You've got that.

10 The only thing that there's gaps in is stuff that
11 helps her. The stuff that hurts her, it's locked in. She's
12 got the letter. You got the letter. She says, I didn't write
13 the letter. I didn't put pen to paper. I didn't have anything
14 to do with the mailing. I don't know how they got that
15 address.

16 MR. JAMES: Right. But if -- if -- we don't know
17 what the engagement letter says. We don't know what the
18 retention letter says.

19 THE COURT: What if it says we intend to draft your
20 letter and mail it, and we'll suggest wording if you don't know
21 how to articulate the legal request that you're making?

22 MR. JAMES: And that's -- that would be a question
23 to put before the Indiana court, whether that carries their
24 burden under the statute if that's what the letter says they're
25 going to do. I mean, that's -- that's the burden they have in

1 Indiana, not our burden, not the burden of Experian, but it's
2 their burden as the plaintiff in Indiana to show that they
3 submit -- the consumer submitted the letter. Okay.

4 THE COURT: Okay. And so how do they show that?
5 Through the attorneys testifying in court or through the party?

6 MR. JAMES: Well, no, it -- we took the deposition
7 of the party, and she was -- she was less than clear. And you
8 think, well, she might -- from your perspective, she was clear,
9 but not all judges think the same. And we want the judge in
10 Indiana to be fully convinced that she did not draft, did not
11 submit, and did not create and deliver that letter.

12 And so that's why Experian -- when I first saw this,
13 I saw discovery in a law firm, I said, What are we doing? I
14 mean, that was my -- I mean, this is an unusual situation, Your
15 Honor. I concede that. But the information we are asking for
16 is an essential element of their claim. And that's why it's
17 germane, relevant, and it's pre-litigation. It's when they're
18 submitting notice to Experian that there's a problem and for
19 Experian to solve it. It's not a -- it's not a privilege
20 issue. It's not a work product issue. So I know he's already
21 addressed all that, but I wanted to come up and put in my local
22 counsel two cents.

23 THE COURT: Thank you.

24 Mr. McClain, what if that engagement letter and that
25 contract isn't so, you know, let us draft your letter, let us

1 use our magic words, and you just relax, we'll do everything?
2 What if the engagement letter isn't that way? What if it's
3 just a sincere, just normal engagement letter? I review it,
4 and I make an order that, out of abundance of caution, this is
5 being reviewed. This should have never -- as plaintiff argued,
6 this is irrelevant. It should never be disclosed in discovery
7 in future cases. This is -- they were right on target with
8 their position.

9 Does that help you? And does that actually give you
10 more -- or your client more authority in the future that other
11 judges have bent over backwards for them, and this just isn't
12 relevant? And this judge says I confirmed how irrelevant their
13 request is.

14 MR. MCCLAIN: Right. Your Honor, if you want to do
15 your fellow judges a favor, I would quash the subpoenas because
16 we open that door a crack, and every other consumer lawyer is
17 now at risk of having to produce their engagement letters.
18 That's one reason why I'm reluctant, unless the relevance is
19 clear.

20 The other thing -- the reason I -- part of the
21 reason I think it's -- it's not just that it's confidential
22 and what -- it doesn't really matter what's in the engagement
23 letter, it matters what actually happened, what the witness --
24 what the client or the plaintiff actually did --

25 THE COURT: Yes.

1 MR. MCCLAIN: -- right? It doesn't matter what the
2 letter says. It's what she testified to under oath.

3 THE COURT: I agree. I'm just trying to think out
4 of the box, you know, to just lay this to rest. And we're not
5 having to take up court time when these engagement letters
6 should not be disclosed in discovery. And if you had an order
7 that, yeah, a judge actually did take a peek, and it has no
8 merit in discovery requests.

9 MR. MCCLAIN: Judge, it won't -- won't stop more
10 requests.

11 MR. SANDEFER: Your Honor, can I take a quick --

12 THE COURT: Yes.

13 MR. SANDEFER: I just wanted to make two very brief
14 points.

15 THE COURT: Yes.

16 MR. SANDEFER: So the first is Your Honor is -- and
17 much of the discussion recently has revolved around Brianna
18 Dulworth. Again, there are also questions that remain as to
19 Craig Dulworth, his memory. And second to that, there has been
20 a lot of briefing in the Indiana court about whether he is fit
21 for another deposition. But he has substantial memory problems
22 remembering things from even a few years ago. As far as
23 whether or not he will be able to remember his role here,
24 that's unclear.

25 So putting, kind of, Brianna Dulworth aside and

1 whatever lack of clarity was -- occurred with regard to her
2 deposition, it will likely be much, much greater with regard to
3 Mr. Dulworth's deposition. So that's where things like the
4 engagement letter may be especially relevant.

5 I also want to mention -- and opposing counsel has
6 made this point a couple of times about how this would crack
7 open the door. There is another case we cited in our response.
8 It's *Cardinali* in the District of Nevada where a similar
9 situation occurred. A law firm was drafting and sending
10 letters on behalf of consumers. And the Court ended up
11 allowing both deposition -- depositions to occur of their
12 counsel as well as several document productions. I believe --
13 I don't have the orders in front of me. But I believe that did
14 include the retention agreement.

15 So there is a case out there that has already
16 cracked open the door with similar facts where opposing counsel
17 was functioning as a credit repair organization. And to the
18 extent that Your Honor has concerns about that, again, that's
19 been contemplated by other courts. Other courts have dealt
20 with the same sort of issues and permitted that discovery to
21 occur.

22 THE COURT: I'm assuming the Dulworths are a married
23 couple?

24 MR. SANDEFER: Yes. Yes, Your Honor.

25 THE COURT: And did they utilize Stecklein for

1 information besides the payments of the car loan that
2 Ms. Dulworth actively testified she actively participated in?
3 Are there other errors that only Mr. Dulworth dealt with?

4 MR. SANDEFER: I believe that the suit related to
5 this account appearing on both of their credit reports. So
6 they both have, I guess, a 1681i claim against Experian for the
7 alleged error that occurred on both of their reports, but it
8 relates to the same account. I believe it was a joint account.

9 THE COURT: And is it more than the car payments
10 that Ms. Dulworth was working on before she got Stecklein
11 involved?

12 MR. SANDEFER: I do not know, Your Honor. Aside
13 from that one page of deposition testimony where she seems to
14 have discussed her actions with regard to the Ally Financial --
15 or with regard to Ally Financial. Also, I want to note that
16 that deposition testimony was related to a correspondence she
17 had with Ally Financial, not Experian. So with a furnisher,
18 not a credit -- or not a credit -- not a CRA, like Experian.
19 But I'm not sure if she had any other contact or had any other
20 issues to resolve.

21 THE COURT: Okay. Without that, I'm not persuaded
22 by the need to know the details of Mr. Dulworth's involvement
23 if -- or none -- maybe none. Maybe he just walked in there
24 with her and signed what she told him to sign because she had
25 reviewed it for her husband. So outside -- if it's different

1 than that, let me know because that would possibly change
2 things. But if you don't know, then that's not -- doesn't
3 change anything regarding Mr. Dulworth. I just don't see the
4 relevance if she's making all these efforts on behalf of them
5 both if he didn't work directly with it, how that --

6 MR. SANDEFER: Right. And part of it is, you
7 know -- and, again, to the extent it's a fact specific inquiry
8 that's looking to the role the consumer played, we do not know
9 what role Mr. Dulworth played. And, again, it's unclear if we
10 will be able to obtain any information regarding what role he
11 played in drafting or sending those disputes. Unlike with
12 Brianna Dulworth's testimony, which is before the Court, we may
13 not be able to get similar testimony from Mr. Dulworth in these
14 limited depositions that are set to occur.

15 THE COURT: So are they both seeking separate
16 damages, I guess?

17 MR. SANDEFER: I would have to defer to plaintiff's
18 counsel or opposing counsel.

19 THE COURT: I guess -- I don't know what the law is
20 in this area if one husband doesn't have a direct
21 involvement -- one spouse doesn't have a direct involvement but
22 the other spouse does on behalf of both of them. Does that
23 negate the husband having direct involvement because he had his
24 wife do it for him? Is there case law --

25 MR. SANDEFER: Not that I'm aware of. I imagine

1 some of these may have to be resolved at summary judgment.
2 But, again, I think what's especially relevant here and what
3 we're trying to figure out is whether or not he or Stecklein &
4 Rapp drafted these letters played a direct role in the dispute
5 process.

6 For example, I -- I'm not expecting to be able to
7 get testimony from Craig Dulworth regarding the role that he
8 took in drafting or in communicating issues to his attorneys or
9 in researching the dispute, any of that material.

10 THE COURT: Okay. Anything further?

11 MR. SANDEFER: Nothing further.

12 THE COURT: All right. Mr. James, do you have some
13 enlightening information for us? Is it Mr. James? Is that
14 right?

15 MR. WEYHOFEN: Weyhofen.

16 THE COURT: Okay. I've got this backwards. You're
17 Weyhofen.

18 MR. WEYHOFEN: Yes.

19 THE COURT: Do you have any enlightening information
20 for us?

21 MR. WEYHOFEN: Just two things I'd like to add
22 briefly, Your Honor.

23 THE COURT: Come on up to the lectern. I'm sorry.
24 You're Mr. James, local counsel.

25 MR. JAMES: Yes, Your Honor.

1 THE COURT: I've got this backwards. I apologize.

2 MR. WEYHOFEN: So just two things I want to add
3 briefly. It won't take long. So opposing counsel referenced
4 the *Cardinali* decision from the District of Nevada. One thing
5 that I think is very important to point out here is that was a
6 class action. So it would arguably make more sense to get more
7 information from potential class members, whereas here you're
8 dealing with a husband and wife. It's two plaintiffs. So
9 that's the first point.

10 And then -- let me see here. And to answer your
11 question about whether or not they would be recovering or
12 seeking to recover damages on behalf of both of them, they
13 filed a joint bankruptcy. So the information that they were
14 contesting was in regard to an auto loan that they reaffirmed
15 through that joint bankruptcy.

16 All right. Nothing further.

17 THE COURT: All right. And so if he did nothing and
18 only his wife coordinated with Stecklein, does that help their
19 case in any way as long as his wife, on his behalf, coordinated
20 with Stecklein in trying to resolve the error?

21 MR. WEYHOFEN: No, Your Honor. So the case law we
22 point out in our briefing demonstrates that you can have a
23 family member, you can have assistance from a third party, as
24 long as you meaningfully participate in the dispute process. So
25 the fact that Brianna did it on behalf of Craig, as long as

1 Craig was there, he was participating with Brianna. That's the
2 end of the inquiry.

3 THE COURT: Okay. Have you read the whole
4 deposition of Brianna or just the excerpts?

5 MR. WEYHOFEN: Yes, Your Honor. So I'm -- I am
6 Dan's associate, so he had me reading that thing up and down
7 multiple times.

8 THE COURT: The whole deposition?

9 MR. WEYHOFEN: Yes.

10 THE COURT: Okay. Was the husband with her in the
11 meetings with Stecklein and -- I can't remember who the woman's
12 name was? Do you know what the full deposition said? Or did
13 they maybe not ask that?

14 MR. WEYHOFEN: I cannot recall, Your Honor.

15 THE COURT: Okay. Okay. I'm not seeing -- are
16 there other issues, Mr. Sandefer, in the request that we
17 haven't touched on that you believe are relevant that you'd
18 like to discuss? Because when I'm looking through there, these
19 lists, all my rulings are to quash. So I just want to make
20 sure I'm not missing something that I shouldn't be missing. Is
21 there something that we need to talk about?

22 MR. SANDEFER: Your Honor, just as we discussed --
23 or as Eddie discussed earlier, 2 and 12, both with regard to
24 the retention agreement and the drafting of plaintiffs' dispute
25 letters, we believe that those are -- I refer -- earlier today,

1 I referred to different buckets, those related directly to the
2 Dulworths and those not. Those are ones that I believe are
3 directly related to the Dulworths.

4 Also, with regard to the deposition topics, there's
5 also one specifically that, again, falls in that same bucket,
6 which is the role in submitting plaintiffs' dispute letters.
7 It's -- it's -- yeah.

8 THE COURT: And who is it that you want to depose?

9 MR. SANDEFER: So it would be someone on behalf of
10 Stecklein & Rapp, a 30(b)6 --

11 THE COURT: A designated officer, director, or other
12 person --

13 MR. SANDEFER: And it does not have to be an
14 attorney.

15 THE COURT: -- competent to testify on behalf of S &
16 R.

17 All right. My inclination -- and I want to give
18 Mr. McClain an opportunity to counter my thoughts, or
19 Mr. Weyhofen -- to submit documents in 2 and 12, which is the
20 retention agreement and contracts, for in camera review. And
21 if someone from Stecklein can generally describe the role in
22 submitting plaintiffs' dispute letters, the role Stecklein
23 played in submitting plaintiffs' dispute letters in camera.

24 And I'm assuming that none of that information is
25 appropriate discovery for the law firm to have to normally

1 disclose, but out of abundance of caution to have that review
2 done. But then it may generate an order that can be utilized
3 in the future by -- I'm assuming it may be the law firm that it
4 is irrelevant and inappropriate for a few reasons to be
5 discoverable.

6 I know your comment that it's a slippery slope, and
7 you don't want to start in that direction. What other things
8 am I missing of pitfalls to doing that?

9 MR. MCCLAIN: Yeah. So on request Number 2, first
10 of all, I don't think an attorney should be testifying on this
11 topic. I mean, a depo topic, you know, we don't -- we object
12 to that for all of the reasons in our briefing, including that
13 it's necessarily going to implicate attorney-client
14 communications. Right? Because Mrs. Dulworth testified, lots
15 of communications back and forth with them. All right.

16 On request Number 2, we get into all documents
17 referring or relating to your drafting of plaintiffs' dispute
18 letters, including, but not limited to, draft versions. So in
19 the Indiana case, Stecklein & Rapp is going to produce the
20 drafts of the -- of the dispute letters. Those are going to be
21 produced in discovery. I don't know --

22 THE COURT: So they will already be --

23 MR. MCCLAIN: Yes. And I don't know what else they
24 need beyond that. And I don't understand what they're asking
25 for, referring or relating to your drafting.

1 THE COURT: Comments that -- corrective comments you
2 may have made. Like if she sent an email, when do I get to
3 come in and review the document? When do I -- something like
4 that? I'm just trying to brainstorm, communications
5 reflecting --

6 MR. MCCLAIN: That's the thing. You and I are both,
7 sort of, like, speculating about what they're asking for
8 because they use facially overbroad language. I mean, that's
9 what I'm saying. Like, I don't know what they're asking for.
10 We're producing the dispute letters. I think that should be --
11 drafts of the dispute letters. That should be sufficient, I
12 would think.

13 And the engagement letter, I've already, you know,
14 said my piece, including that it doesn't matter what the
15 engagement letter says. It matters what the witness says, what
16 actually happened.

17 THE COURT: She said she gave them information. I
18 don't know if they asked, Did you submit any documents? Was it
19 just oral?

20 MR. MCCLAIN: So I don't remember in her deposition
21 whether she was asked to identify -- I mean, I -- you know,
22 some of this is cleaning up from a deposition that maybe could
23 have been done differently. Right? And I don't remember
24 whether she was asked about what information she gave them. I
25 just don't remember. I know she said, I'm the one who found

1 the error. I gave them the information. I don't know what it
2 was myself, Judge, but I'll bet it's been produced, if it's
3 written, in written format.

4 THE COURT: All right. And then I've already
5 addressed 12.

6 And then 4 is similar to, if it's not an attorney.
7 A paralegal would probably fit in that same --

8 MR. MCCLAIN: Sorry. Are we talking about --

9 THE COURT: Deposition.

10 MR. MCCLAIN: -- 4.

11 THE COURT: What was -- to have someone from
12 Stecklein describe the process, I guess, confirming what the
13 victim -- the victim -- the plaintiff says.

14 MR. MCCLAIN: She was a victim but --

15 THE COURT: Just come off two days of criminal.

16 MR. MCCLAIN: If I could just ask Mr. --

17 THE COURT: Of course.

18 MR. MCCLAIN: Judge, what we're doing is you asked
19 earlier whether there was other form of discovery they'd been
20 asked about, you know, how the letters were prepared.

21 THE COURT: Yes.

22 MR. MCCLAIN: And I asked for interrogatories. He
23 may have the interrogatories. So we're just looking to see if
24 there's anything --

25 THE COURT: All right. Is there any objection for

1 the attorney with Stecklein to advise the Court on -- or if you
2 know, I guess, you could advise on what discovery has already
3 been specifically or more specifically requested regarding 2?

4 MR. SANDEFER: Referring to number 2?

5 THE COURT: It's documents referring or related to
6 your drafting of plaintiffs' dispute letters, including, but
7 not limited to, draft versions. And Mr. McClain believes that
8 that has already been requested probably in some other
9 subpoena -- some other document request and that you would be
10 getting those through some other request.

11 MR. SANDEFER: So -- and I can speak up or go to the
12 podium, whichever is better.

13 THE COURT: Come on up to the lectern.

14 MR. SANDEFER: Sure. So opposing counsel is correct
15 that Stecklein & Rapp, a couple weeks ago -- and I'll hand this
16 back to -- that opposing -- that Stecklein & Rapp has agreed to
17 produce draft dispute letters. I think we refer to those in a
18 footnote. Those draft dispute letters are -- they apparently
19 differ as to attachments and things of that sort. That's the
20 only document that I'm aware of that they have referenced here.

21 But I'm not sure if there is -- if there are any
22 other documents. Your Honor mentioned communications or other
23 documents or emails, whatever, that may refer to or clarify
24 plaintiffs' role, either Brianna Dulworth's or Craig
25 Dulworths's role, in the dispute letters or whether there are

1 review comments or edits made or anything along those lines.

2 THE COURT: All right. Anything further?

3 MR. SANDEFER: Nothing further from us.

4 THE COURT: Mr. McClain, anything --

5 MR. MCCLAIN: Judge, I was just going to say,
6 there's emails from the client saying change this or I'm
7 concerned about this. Aren't those privileged? I mean,
8 they're consulting with a lawyer about their discovery
9 responses in the case seeking -- I would imagine seeking
10 guidance. So I feel like all this stuff, we're just -- now
11 we're getting into privilege issues on top of everything else.

12 MR. SANDEFER: And just to clarify -- and this has
13 been our position from the get-go -- we are not looking for any
14 information after the case has been filed. We are not looking
15 for privileged information. We are strictly looking at
16 documents and testimony regarding the role that Stecklein &
17 Rapp played in this pre-litigation process of drafting,
18 sending, authoring dispute letters on behalf of clients.

19 So we're -- we're not looking for communications
20 after the case was filed. We're looking for, again, strictly
21 those documents that may be related to the dispute letters
22 themselves.

23 THE COURT: And how is -- documents that the
24 Dulworths may have provided to Stecklein, how is that
25 privileged --

1 MR. MCCLAIN: So --

2 THE COURT: -- if that's utilized in --

3 MR. MCCLAIN: Yeah. That's what I'm saying.

4 THE COURT: -- the letter?

5 MR. MCCLAIN: I would imagine that all that's
6 already been produced. You know, like, the credit report --
7 the -- how do you call it, the -- the erroneous credit report
8 that she caught, the information she found that alerted her
9 that there was -- I mean, all that -- I think some of it is
10 attached to the subpoenas. I think it's all been produced
11 already.

12 THE COURT: All right.

13 Okay. Mr. Weyhofen, do you want to weigh in one
14 more time?

15 MR. WEYHOFEN: Nothing further, Your Honor.

16 THE COURT: Okay. I'll get an order out -- I want
17 to just mull over it a little bit to see what the exact
18 contours are, but the -- I will quash at least everything at
19 this point, but I want to think about the document request
20 Number 2 and Number 12 and possibly the deposition subpoena 4.
21 I want to think about those three areas.

22 If you want to also think about it and submit an
23 email or something formal, ECF filing, an email to Sara Skelton
24 or ECF filing, I'll take a look at that. If you need a day or
25 two -- we could try to get an order out by close of business

1 Friday. Today is Wednesday. So that would give everybody a
2 day or two to submit some final thoughts.

3 I'm very slow in civil, so you all are getting
4 punished for asking me to weigh in on this. All right.

5 MR. MCCLAIN: We appreciate it, Judge.

6 MR. JAMES: Thank you, Your Honor.

7 MR. SANDEFER: Yes. Thank you.

8 THE COURT: All right. Have a good evening.

9 (Proceedings concluded at 3:21 PM)

10 * * * * *

11 CERTIFICATE

12 I certify that the foregoing is a correct redacted
13 transcript from the record of proceedings in the above-entitled
14 matter.

15

16 May 30, 2023

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19

/s/Jean M. Crawford
JEAN M. CRAWFORD, RDR, CRR
United States Court Reporter

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